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July 7, 2003

T.R.A. DOCKET ROOM

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Tariff Filing to Modify Language Regarding Special Contracts*
Docket No. 03-00366

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's Reply Brief Regarding Time for CSAs to Become Effective Pursuant to Chapter 41 of the Tennessee 2003 Public Acts. Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Tariff Filing to Modify Language Regarding Special Contracts*

Docket No. 03-00366

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY BRIEF
REGARDING TIME FOR CSAs TO BECOME EFFECTIVE
PURSUANT TO CHAPTER 41 OF THE
TENNESSEE 2003 PUBLIC ACTS

BellSouth Telecommunications, Inc. ("BellSouth") files this Reply in response to the briefs filed on behalf of the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate" or "CAD") and AT&T Communications of the South Central States, LLC ("AT&T").¹ BellSouth respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

INTRODUCTION

The briefs filed by AT&T and the CAD offer nothing new. Both briefs rely on the erroneous presumption that TRA rules **currently** require CSAs to be filed as tariffs and wrongly argue that a CSA is encompassed by some **current** Authority definition of the term "tariff". These premises are incorrect for the reasons set out in BellSouth's original brief and the reasons discussed below.

It is noteworthy that the Consumer Advocate and AT&T urged the TRA to convene a full-blown contested case on this matter and suggested that, without further process, the TRA would engage in a "rush to judgment". Both parties argued

¹ Time Warner filed general comments stating, among other things, that the new CSA statute was intended to make state law and rules less restrictive. Time Warner did not oppose BellSouth's tariff.

strenuously for the need for some further opportunity to make argument and “be heard”. Strangely, however, the briefs submitted by these parties are largely duplicative of briefs filed earlier relating to this issue. Neither brief contains any new substance or additional argument, which could not have been reasonably included in the earlier filings by these parties. In short, while these parties asked for an additional opportunity to be heard, it does not appear that they had any additional points of significance to raise.

DISCUSSION

I. AT&T’s Brief Wrongly Suggests That TRA Rules Currently “Define” Tariffs In A Fashion That Includes CSAs.

AT&T’s “Statement of the Facts” suggests that Authority Rule 1220-4-1-.03 “defines” tariffs in a fashion that includes CSAs. The Rule does not define tariffs. Rather, the Rule sets forth those items which must be stated within a tariff. Specifically, Rule 1220-4-1-.03 provides as follows:

1220-4-1-.03 TARIFF CONTENTS

- (1) Tariffs must explicitly state the rates and charges for each class of service rendered, designating the area or district to which they apply.
- (2) Rules and regulations of the utility that in any manner affects the rates charged or to be charged or that define the extent or character of the service to be given shall be included with each tariff.

As is clear from the language quoted in its entirety, the rule does not state, as AT&T suggests, that every rate charged to every customer must be tariffed. Rather, the Rule provides that tariffs must state the rates for each “class of service rendered.” The Rule provides that each **class** of service must be contained in the tariff. The various classes

of regulated services BellSouth offers are tariffed. CSAs do not constitute a separate "class of service."

The Consumer Advocate further muddies the water by selectively quoting from BellSouth's tariffs relating to the term "class of service." BellSouth's tariffs provide the following:

CLASS OF SERVICE

A description of telephone service furnished a subscriber in terms such as:

- a. For Exchange Service:
 - (1) Individual line, 2-party line, 4-party line, etc. (See also "Primary Class of Service".)
 - (2) Type of Rate: Flat, Usage Based Pricing
 - (3) Character of Use: Business or residence
 - (4) Dialing Method: Touch-Tone or Rotary.
- b. For Long Distance Service:
 - Type of Call: Station-to-station or person-to-person
- c. For Wide Area Telecommunications Service:
 - Type of Rate: Full or measured time.

BellSouth GSST A1. Definition of Terms. It is clear from a review of BellSouth's entire tariff section relating to the term "Class of Service" that the term refers to types of telecommunications services as opposed to particular discounts offered and negotiated with a particular party. Similarly, the TRA's own Rules refer to "Class of Service" as "the various categories of service generally available to customers such as business or residence." TRA Rule 1220-4-2-.03(f). From all of these definitions, it is clear that a CSA is not a "class of service". Rather, the various categories of regulated services contained in the negotiated CSA are already tariffed in the general tariffs of the telecommunications service provider. The negotiated discount off of those already-tariffed services contained in the CSA, however, need not be tariffed pursuant to the current Rules of the Authority or the terms of BellSouth's tariffs.

II. AT&T Concedes That The TRA Has The Discretion To Allow Immediate Effectiveness Upon Filing of CSAs.

While AT&T argues that the new statute does not require immediate effectiveness, AT&T concedes that the TRA is empowered to shorten a "review period" or to determine an appropriate review period within its discretion. Consequently, AT&T concedes that the Authority has the authority to construe the statute to permit CSAs to be effective upon filing. AT&T suggests (wrongly) that nothing in Chapter 41 requires the TRA to treat CSAs as effective upon filing. Likewise, however, AT&T apparently recognizes that nothing in Chapter 41 prohibits the TRA from treating CSAs as effective upon filing, which is precisely what the panel voted to do at the June 2 Agenda Conference.

CONCLUSION

The Authority's current rules do not require tariffing of CSAs. The fact that BellSouth chose in the past to file a tariff page for each CSA has been repeatedly explained. That process was used by BellSouth in order to address concerns about price discrimination raised by the Consumer Advocate. The suggestion by parties that this practice somehow resulted in a TRA rule requiring the practice is not supported by the new statute, anything in the prior statute, the provisions of the Uniform Administrative Procedures Act, or the language in the TRA's Rules.

In order to delay to benefits of the new law to BellSouth and its customers, AT&T simply attempts to create the erroneous perception that the TRA rules already require CSAs to be filed as tariffs, and the CAD has simply parroted AT&T's flawed argument. These parties' citations to the TRA's rules, however, do not support that contention.

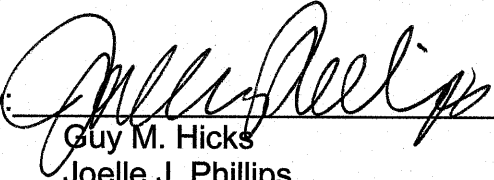
The true fact is that the TRA rules have never required that CSAs be filed as tariffs, and they do not require that today.

For the reasons contained herein and those presented earlier in this proceeding (as well as the earlier dockets addressing these matters), BellSouth urges the TRA to stay the course of its earlier ruling implementing the statute, a ruling which is fully consistent with both the statute and legislative history, and as to which no party sought clarification or reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

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☐ Overnight

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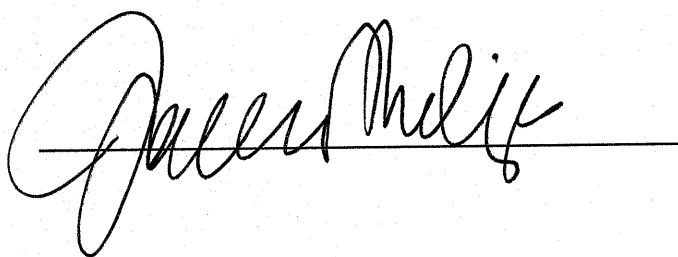
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A handwritten signature in cursive script, appearing to read "Vance Broemel", is written over a horizontal line.